

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Complaint on First-Class Mail
Service Standards

Docket No. C2001-3

REPLY OF THE UNITED STATES POSTAL SERVICE
TO THE ANSWERS OF
THE OFFICE OF THE CONSUMER ADVOCATE AND THE COMPLAINANT
IN OPPOSITION TO THE MOTION TO DISMISS
(August 21, 2001)

On August 14, 2001, the Office of the Consumer Advocate (OCA) and the Complainant filed answers to the July 30, 2001 motion of the United States Postal Service to dismiss the complaint in the above-captioned proceeding. Almost all of the arguments advanced by both parties are addressed in the Postal Service's motion. Below, the Postal Service responds to several of the arguments advanced by the OCA and the Complainant in support of their respective answers.

A. The Docket No. N89-1 Realignment Plan Was Submitted For Review
Within a Reasonable Time Prior To Its Effective Date

At pages 6-7 of its answer, the OCA argues that even if the changes implemented in 2000 and 2001 were the subject of the Docket No. N89-1 advisory opinion, then the realignment plan that contained them was not filed within a reasonable time prior to their effective date, within the meaning of section 3661.

The OCA argues that

[t]he "reasonable time" standard implies both that the Commission have an opportunity to consider changes before their implementation and that implementation take place reasonably promptly after the Commission's advisory report.

OCA Answer at 7. The Complainant offers a similar argument at pages of his Answer in Opposition at pages 19-22.

The Postal Service agrees that the “reasonable time” wording in section 3661 is intended to give the Commission a fair opportunity to exercise its authority to review service change plans and to issue advisory opinions on such changes before they are implemented. This conclusion is reinforced by the Commission’s adoption of 39 C.F.R. 3001.72, which specifies that requests for advisory opinions “shall be filed not less than 90 days in advance of the date on which the Postal Service proposes to make effective the change in the nature of the postal services involved.” The Postal Service’s Docket No. N89-1 request clearly met this standard. It was filed on September 29, 1989. It contained a proposal to begin implementing the realignment plan on February 10, 1990. That date was then changed to June 30, 1990, and then again to no earlier than July 28, 1990. *See* PRC Op. N89-1 at 2.¹

From inception to completion, the implementation of the Docket No. N89-1 realignment plan does not stand out as a model of perfection or expedition. Nevertheless, there is no basis for speculating about what the framers of section 3661 might have contemplated or how they might have judged the current circumstances. The OCA is entitled to its aspirations. However, section 3661, its legislative history, and the implementing regulations are all silent on the question of the existence of any deadline or degree of promptness for implementing every aspect of service change plan reviewed under the section. Nor is there any basis for arguing that section 3661 requires a second request for an advisory opinion regarding whether the Postal Service could seek to complete a plan already reviewed under that section, solely because

¹ When the Commission issued its Docket No. N89-1 opinion, it was uncertain about when the Postal Service would eventually implement its plan. As indicated in the Gannon Declaration, the Postal Service began implementation of Phase 1 in late 1990. And as explained beginning at ¶¶12 of the Gannon Declaration, the Postal Service did not complete implementation of Phase 2 until May, 2001.

implementation took so long.²

B. Repeated And Unfounded Suggestions of Perjury Ultimately Tarnish The Source And Not The Target

In a paragraph beginning on page 18 of his reply and carrying over to page 19, Complainant recounts the Postal Service's February 16, 2001 response to his January 27, 2001, Freedom of Information Act request. Alleging that the Postal Service, in responding to that request, failed "to produce a single document relating to Docket No. N89-1[.]" Complainant argues that this alleged failure

suggests that the Postal Service invented . . . [the] defense [that the recent service standard changes constitute the completion of Phase 2 of its Docket No. N89-1 realignment plan] after . . . [he] filed this complaint with the Commission.

The Postal Service regards the "suggestion" that it "invented this defense after" the Complaint in this proceeding was filed as tantamount to an allegation that its July 30, 2001, motion contains disingenuous arguments founded upon false statements provided under penalty of perjury in the Declaration of Charles M. Gannon.

The validity of the outcome of all proceedings before the Postal Rate Commission depends upon the integrity of all who participate: the Commissioners, Commission staff, as well as Postal Service and intervenor witnesses and counsel. Accordingly, there can be no more serious an accusation than that some participant in the process, by word or deed, has attempted to undermine the integrity of any Commission proceeding. Such an accusation should not be taken lightly by the Commission or by any party against whom it is directed.

² At page 41 of PRC Op. N89-1, the Commission advised the Postal Service to correct anomalies, illogical service commitments, and inefficient service standards, irrespective of whether it was going to implement the nationwide plan reviewed in that proceeding. Carried to its logical conclusion, the thrust of the OCA's argument is that the Postal Service must first solicit another advisory opinion before making any such corrections, too.

Unfortunately, the Postal Service finds itself responding to baseless charges of "inventing" or "concocting" defenses for the second time in recent weeks from the same source in separate proceedings.³ It makes no difference whether the charges are hurled at the Postal Service institutionally or at a particular postal witness; they should never be made casually or in the absence of virtual certainty. The mere fact that, as here, such a charge is easily refuted brings no consolation to the individuals or the institution against whom it is made. A continuation of this pattern of vituperation can only degrade the tenor of Commission proceedings.

Informally, to the source of the offending sentence on pages 18-19 of Complainant's July 14, 2001, reply, undersigned counsel has explained how it could be demonstrated that the accusation is false. Based upon this proffer, the Postal Service informally requested that the offending sentence on pages 18-19 be amended or withdrawn, so as (1) to eliminate a false accusation from the record in this proceeding, (2) to obviate the need to file this response, and (3) to spare the Commission the burden of having to evaluate the accusation and rejoinder. Unfortunately, the efforts to resolve this matter informally appear to have been in vain.

The Postal Service cannot ask the Commission to judge such an accusation by its source. Nor can the Postal Service assume that an accusation of this nature will be dismissed by the Commission for what it is. The Postal Service assumes that the Commission not only regards such an accusation as extremely grave, but also that the Commission would appreciate being provided with a record basis for judging it. It is a burden the Postal Service should not have to bear. But it is one that is borne in order to

³ See, Response of the United States Postal Service To Carlson Cross-Motion For Reconsideration And Response Regarding DFC/USPS-19 and Presiding Officer's Ruling No. C2001-1/6 at 6 (August 9, 2001). There, the Postal Service was obliged to refute similarly baseless charges that it "invented" and "concocted" concerns about employee and mail security.

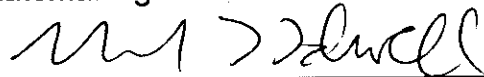
make very clear to the Commission the utter baselessness of the accusation and in the hope that it will discourage further attempts to debase these proceedings. Accordingly, the Postal Service provides the attached Second Declaration of Charles M. Gannon.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel
Ratemaking

A handwritten signature in black ink, appearing to read "Michael T. Tidwell", written over a horizontal line.

Michael T. Tidwell
Attorney

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August 21, 2001

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Complaint on First-Class Mail
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Docket No. C2001-3

SECOND DECLARATION OF CHARLES M. GANNON
(August 21, 2001)

I, Charles M. Gannon, hereby declare, under penalty of perjury, that the following statement submitted in Postal Rate Commission Docket No. C2001-3 is true to the best of my information, knowledge and belief.

For purposes of this statement, I hereby incorporate by reference the autobiographical sketch contained in the initial Declaration I submitted in this proceeding on July 30, 2001.

1. In my initial Declaration, I explained how I came to assume responsibility for the decisions that are the subject of this complaint proceeding.

2. At the initial 1998 meeting regarding the Service Standard changes at issue in this proceeding, Mr. Rapp and Mr. Harris invited Mr. Seymour Lazerowitz, one of the Postal Service's Docket No. N89-1 witnesses, to attend the meeting in order to obtain an overview of the realignment efforts undertaken in 1990 and 1991. We discussed our objectives with Mr. Lazerowitz, among others attending the meeting, and he provided us with insight as to some of the events, and obstacles, that were encountered during the initial phase. During that meeting, Mr. Lazerowitz recommended that we consult the Law Department for further guidance, so that we could obtain additional advice about how to proceed.

3. On numerous occasions after that initial meeting with Mr. Lazerowitz, beginning in 1998 and carrying over into early 2001, I participated in a number of meetings during which either Mr. Harris, Mr. Rapp, or I sought, and obtained, advice from the Law Department regarding how we might proceed to finalize Phase 2 of the Docket No. N89-1 realignment plan and to accomplish the other operational objectives

described in my initial Declaration. During this same time, I also reviewed documents from the Law Department's Docket No. N89-1 files.

4. In responding to the January 27, 2001, Freedom of Information Act (FOIA) request for records which is described on pages 18-19 of Mr. Carlson's August 14, 2001, pleading, my office provided the records that we generated, and relied on, in finalizing Phase 2 of the plan. One of those documents is a set of PowerPoint slides that Mr. Rapp, Mr. Harris and I used to present our plan to the Management Teams in all 10 of our Areas as we traveled around the country explaining what additional changes we were considering in Phase 2. While that PowerPoint presentation is only prepared in a "bulleted" format, with key points that were going to be addressed listed in very brief terms, that document provided to Mr. Carlson *specifically* refers to the Docket No. N89-1 plan on the second page where it says, in part, "*History of Current Service Standards...90-91 Realignment*". During each of the joint presentations given across the country by Mr. Rapp, Mr. Harris or myself, the linkage to the Docket No. N89-1 proceeding (referred to by the years of the initial implementation Phase of "1990-91") was communicated to the postal managers in our Field Offices all across the country who attended our presentations.

5. In his FOIA request, Mr. Carlson asked for a copy "of every document and other record, whether in electronic or hard-copy form, that identifies any change in service standards for First-Class Mail destined to the SCF's listed above, provides the effective date of any change in service standards for First-Class mail destined to the SCF's above, or explains the reasons or justifications for any change in service standards for First-Class Mail destined to the SCF's listed above." In responding, we provided every specific Service Standard pair which had a change during the requested timeframe, the effective date of said change, and our source document regarding the history of, and methodology for, said changes by providing the PowerPoint presentation previously referenced. We did not interpret the request as asking for copies of the already public record from the Docket No. N89-1 case. In fact, in his request, Mr. Carlson specifically states that "[m]y request covers only documents relating to changes in service standards implemented in 1998, 1999, 2000, or 2001." Inasmuch as the PowerPoint presentation had already identified the linkage to the Docket No.

N89-1 changes previously implemented in 1990-91, we interpreted his request as seeking the records that we in Service Management Policies and Programs had generated in the process of finalizing Phase 2 of the plan that resulted in the changes to which he was referring, during the time frame *he specifically cited in his request*. It was, and continues to be our belief that we responded fully to the spirit, and language, of that FOIA request.

6. I categorically deny and strenuously object to Mr. Carlson's offensive "suggestion" that the Postal Service's July 30, 2001, explanation of the link between the Service Standard changes at issue in this case and the Docket No. N89-1 realignment plan was "invented" as a response to the filing of the complaint in this case.

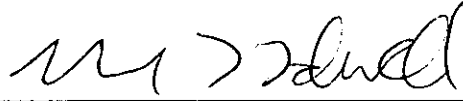


Charles M. Gannon

August 21, 2001

CERTIFICATE OF SERVICE

I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day served the foregoing document upon all parties of record in this proceeding.



Michael T. Tidwell

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